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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NATIONAL TPS ALLIANCE, MARIELA GONZÁLEZ, FREDDY JOSE ARAPE RIVAS, M.H., CECILIA DANIELA GONZÁLEZ HERRERA, ALBA CECILIA PURICA HERNÁNDEZ, E.R., HENDRINA VIVAS CASTILLO, A.C.A., SHERIKA BLANC, VILES DORSAINVIL, and G.S..

Plaintiffs,

VS.

KRISTI NOEM, in her official capacity as Secretary of Homeland Security, UNITED STATES DEPARTMENT OF HOMELAND SECURITY, and UNITED STATES OF AMERICA

Defendants.

Case No. 3:25-cv-01766-EMC

Judge: Hon. Sallie Kim

PLAINTIFFS' OPPOSITION TO DEFENDANTS' REQUEST FOR CLARIFICATION

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1 Defendants filed the Request for Clarification (“Request” or “Req.,” Dkt. 223) without
 2 consulting or notifying Plaintiffs. As to the first item, the deadline for Defendants to conduct a
 3 search, and produce and log all responsive communications custodial to Secretary Noem’s Executive
 4 Secretary, Plaintiffs take no position in light of the extension of time for the filing of Plaintiffs’
 5 Reply in Support of Summary Judgment. The second item, however, represents a troubling attempt
 6 to alter the already narrowly tailored scope of discovery permitted by the District Court. The Request
 7 heightens Plaintiffs’ concerns about the records Defendants continue to improperly withhold as non-
 8 responsive. Defendants must produce as responsive to RFP Nos. 1 and 2 “internal DHS memoranda
 9 concerning vacating, partially vacating, or terminating TPS designations for Venezuela or Haiti.”
 10 Defendants, however, now seek this Court’s express endorsement for withholding such documents
 11 as nonresponsive. The Request should be rejected. This Court should not authorize Defendants to
 12 withhold as non-responsive “internal DHS memoranda.” Req. at 2.

13 **BACKGROUND**

14 The District Court ordered Defendants to produce discovery in response to Plaintiffs’ RFP
 15 Nos. 1 and 2, which seek “communications . . . regarding whether to vacate, partially vacate, or
 16 terminate the TPS designations for Venezuela or Haiti” (RFP No. 1) and “communications . . .
 17 concerning the TPS periodic review process . . . to the extent applied in whole or in part to the
 18 decisions to vacate, partially vacate, or terminate TPS designations for Venezuela or Haiti” (RFP
 19 No. 2). ECF 129, 135, 123-1 at 1. The District Court limited discovery in response to RFP Nos. 1
 20 and 2 to certain custodians identified by their name or position, for the limited time period of
 21 January 20–February 24, and using specific search terms. ECF 135, 132, 132-1.

22 The District Court denied RFP No. 3, which at the time of that ruling sought “documents
 23 related to media appearances or statements referenced in the Amended Complaint.” ECF 132 at 6.
 24 Plaintiffs had revised RFP No. 3 (and other requests) in light of earlier feedback from the District
 25 Court and to eliminate a potential ambiguity, yet Defendants pretend the District Court was still
 26 presented with the earlier version of RFP No. 3, which concerned “documents or communications
 27 . . . about DHS press releases or internal DHS memoranda concerning vacating, partially vacating, or
 28 terminating TPS designations for Venezuela or Haiti, including any memoranda or guidance about

1 how to respond to questions from media or TPS holders about such decisions.” ECF 123-1 at 1.

2 Following the District Court’s order, Defendants produced and/or logged approximately
 3 1,150 documents responsive to RFP Nos. 1 and 2. Plaintiffs immediately identified glaring
 4 deficiencies—*i.e.*, the lack of documents custodial to Secretary Noem and her Chief Advisor Corey
 5 Lewandowski, or for the period January 20–24 (until the evening circulation of the Administration’s
 6 first draft Federal Register notice, the first responsive document Defendants identified). The parties
 7 met and conferred for weeks regarding these and other discovery deficiencies. In response to
 8 Plaintiffs’ inquiries, Defendants could only identify the following types of documents as ones that
 9 hit on the court-ordered search terms, but would (in their view) be categorically nonresponsive:
 10 (1) documents concerning “TPS and Venezuela as a whole”; (2) communications concerning agency
 11 press releases; (3) the circulation of media clips related to the relevant TPS designations; and
 12 (4) family members of documents that hit on the search terms but which do not themselves hit on the
 13 search terms. ECF 211 at 2-3. Defendants never identified to Plaintiffs or this Court that they might
 14 be withholding as categorically nonresponsive “internal DHS memoranda concerning vacating,
 15 partially vacating, or terminating TPS designations for Venezuela or Haiti.”

16 Documents concerning “TPS and Venezuela as a whole” are undeniably responsive to issues
 17 in this litigation. ECF 211 at 3. But without taking a position on Defendants’ contention that the
 18 remaining three types of documents Defendants identified can be withheld as nonresponsive, in the
 19 interest of compromise, Plaintiffs proposed permitting Defendants to exclude those categories from
 20 their production even if they otherwise hit on the court-ordered search terms without prejudice to
 21 revisiting the issue at a later date. ECF 211 at 2–3. Resolving this dispute at the present moment, this
 22 Court ordered the production of certain “hits” withheld as nonresponsive, with these latter three
 23 categories excluded. ECF 220 ¶ 1.

24 ARGUMENT

25 Defendants seek to use a purported “clarification” to excuse persistent noncompliance with
 26 the District Court’s order granting RFP Nos. 1 and 2. In denying RFP No. 3, the District Court did
 27 not purport to permit Defendants to withhold materials directly responsive to RFP Nos. 1 and 2—

1 documents of extraordinary relevance to the District Court’s consideration of these matters—
 2 “internal DHS memoranda concerning vacating, partially vacating, or terminating TPS designations
 3 for Venezuela or Haiti.” The District Court merely excluded discovery into internal communications
 4 about press and media matters.

5 It is hard to conceive of records of greater relevance—and more clearly responsive to RFP
 6 Nos. 1 and 2—than “internal DHS memoranda” providing express agency guidance concerning the
 7 challenged decisions. All such memoranda are clearly “communications.” By definition, they are
 8 “regarding whether to vacate, partially vacate, or terminate the TPS designations for Venezuela or
 9 Haiti” (RFP No. 1) and/or “concerning the TPS periodic review process . . . to the extent applied in
 10 whole or in part to the decisions to vacate, partially vacate, or terminate TPS designations for
 11 Venezuela or Haiti” (RFP No. 2).

12 Nothing in Judge Chen’s discovery orders supports reading RFP No. 3 as rendering RFP
 13 Nos. 1 and 2 so severely curtailed. ECF 129 & 135. Quite the opposite. Judge Chen recognized, as
 14 Plaintiffs intended, that RFP No. 3 sought “documents related to DHS press releases or guidance
 15 about how to respond to questions from the media or TPS holders.” ECF 129 at 8; *see also* ECF 135
 16 at § B (analyzing as an example of the type of documents responsive to RFP No. 3 an email thread
 17 related to a DHS press call). Judge Chen denied RFP No. 3 as to media matters, not on the ground
 18 that it sought internal agency guidance about the TPS decision-making process. Defendants
 19 previously acknowledged as much—telling this Court that “RFPs 1 and 2 are limited to the decision-
 20 making process,” and RFP No. 3 concerned “communications about the decision, and how to publish
 21 or implement it.” ECF 211 at 6.

22 **CONCLUSION**

23 By seeking clarification, Defendants have effectively conceded that they have improperly
 24 withheld “internal DHS memoranda” about the challenged decisions, another astonishing and
 25 troubling show of disregard for basic discovery obligations. For the foregoing reasons, the Court
 26 should deny the Request to the extent it purports to alter the scope of discovery by construing RFP
 27 No. 3 in a fashion that would vitiate RFP Nos. 1 and 2. Defendants should be directed to promptly

1 produce and log all “internal DHS memoranda concerning vacating, partially vacating, or
2 terminating TPS designations for Venezuela or Haiti.”

3 Date: June 26, 2025

Respectfully submitted,

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/s/ Emilou MacLean
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Attorneys for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on June 26, 2025, I caused the foregoing to be electronically filed with
3 the Clerk of Court using the CM/ECF system, which will then send a notification of such filing
4 (NEF) to all counsel of record.

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6 ACLU FOUNDATION
7 OF NORTHERN CALIFORNIA

8 */s/ Emilou MacLean* _____
9 Emilou MacLean

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